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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,043	12/05/2003	Scott Goldthwaite	WS-104	9327
27769	7590	09/03/2008		
AKC PATENTS 215 GROVE ST. NEWTON, MA 02466			EXAMINER	
			VYAS, ABHISHEK	
ART UNIT		PAPER NUMBER		
3691				
MAIL DATE		DELIVERY MODE		
09/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

***Advisory Action  
Before the Filing of an Appeal Brief***

Application No.	Applicant(s)	
10/729,043	GOLDTHWAITE ET AL.	
Examiner	Art Unit	
ABHISHEK VYAS	3691	

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 25 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
 See Continuation Sheet

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

/Alexander Kalinowski/  
 Supervisory Patent Examiner, Art Unit 3691

Continuation of 11. does NOT place the application in condition for allowance because: The arguments set forth by the applicant are unpersuasive. The claims as presented do not place the application in condition for allowance for the following reasons: The claims suggest or make optional but do not require the steps of a merchant server, payment server, an authentication server and a communication device, as they recite optional language such as "adapted to" which raise the question of whether the steps are positively claimed. B. Applicant contends that claims 1 and 23 were not addressed in either office action. The examiner respectfully disagrees. Claims 1 and 23 were addressed on page 2 of the non-final office action and cited again in the final office action. Therefore the final office action stands. It is also pointed out that the communication device is rejected and cited in the non-final office action contrary to the assertion that there is no citation (please refer to non-final office action page 3). The examiner is merely pointing out that the Jacobson reference when broadly interpreted does include a method of reading payment card information via a magnetic stripe reader. Examiner would like to mention that the Gobburu, Young, Jacobson and Kelly references disclose wireless devices and payment authentication systems, therefore employing KSR rationales, it would have been obvious to try various combinations to acquire a desired result. Thus, buying digital goods instead of physical goods as contended by the application would have been obvious to try, further the nature of the goods (whether physical or digital) is non-factual descriptive material. In points C-H, it is again contended that limitations are not taught by the combination of references cited, however, the examiner would like to point that since the claim language make optional and do not positively require the steps recited in the claims and limitations argued, due to the recitation of "adapted to", the examiner using the broadest reasonable interpretation, is respectfully unpersuaded and maintains the final rejection. Therefore at this time the request for allowance is respectfully declined.